

Remarks

The Examiner rejected all claims under 35 USC §102 as being anticipated by U.S. Patent Nos. 5,079,856 to Truelsen ("Truelsen") in view of U.S. Patent No. 5,775,005 to McClelland ("McClelland").

All of Applicant's claims relate to an outsole having a generally flat innermost surface and a generally flat outermost surface that is generally parallel with the innermost surface and adapted to be in contact with a walking surface, an opening extending from the innermost surface to the outermost surface of the outsole, a plug placed in the opening, and a clearance defined by a bottom surface of the plug and outermost surface, wherein the clearance permits the plug to expand and absorb shock.

Truelsen relates to the outer surface of the outsole being at an angle relative to the walking surface in order to create a clearance defined by the bottom of the plug and the walking surface. There is no clearance between the bottom of the plug and the outermost surface of the outsole, as claimed by Applicant. Moreover, Truelsen does not have a generally flat innermost surface or a generally flat outermost surface that is generally parallel with the innermost surface. In addition, Truelsen fails to show a clearance defined by a bottom surface of the plug and the generally flat outermost surface.

McClelland relates to a tread 40 be positioned in an opening between the bottom of the plug and the walking surface. Because of the placement of tread 40 within the opening, the tread 40 inhibits the plug from expanding and may introduce wear to the plug, all of which are disadvantages that are overcome by Applicant's claimed clearance. Similar to Truelsen, McClelland fails to show, and the reference is not even relied upon by the Examiner for showing, a clearance defined by a bottom surface of the plug and the generally flat outermost surface of the outsole.

Because both references fail to show a clearance defined by a bottom surface of the plug and the generally flat outermost surface, the combination of Truelsen and McClelland also fails to show these claimed limitations without some modification to the combination.

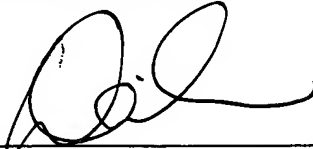
A prima facie case of obviousness requires that the Examiner show that the proposed combination teaches all of the claimed elements, that there is motivation for the combination, and that there is a reasonable expectation of success for the combination. Because no reference alone or in any combination with one another relates to a processor coupled to both a heating system and a temperature monitoring system or a thermal shield around each of two cells, the proposed combination cannot include these limitations. When no reference refers to such claimed features, the motivation to combine the stated references in a manner to include Applicant's claimed feature is also absent. The reasonable expectation of success prong is moot given the failure of the "all-elements" and motivation prongs.

As discussed above, since there is no motivation to combine Gershfeld and Refalo, and even assuming somehow that the two references may be combined, the combination will not arrive at Applicant's processor and thermal shields around each cell without some modification. However, for a modification under 35 USC §103 to be proper, there must be some teaching or suggestion for one skilled in the art to make the modification.

Without some teaching or suggestion, one skilled in the art lacks the motivation to make the modification. As discussed above, all of the references lack a teaching or suggestion for a processor coupled to both a heating system and a temperature monitoring system as well as a thermal shield around each of two cells. It can hardly be argued or presumed that such limitations would be obvious.

Based on the foregoing, Applicants' submit that all claims are allowable and that all rejections be withdrawn.

Respectfully submitted,



July 17, 2006

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